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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
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12 MARC OPPERMAN, et al.,
13 Plaintiffs,
14 v.
15 PATH, INC., et al.
16 Defendants.

Case No. 13-cv-00453-JST

**DEFENDANT FOURSQUARE
LABS, INC.'S MOTION TO
DISMISS SECOND
CONSOLIDATED AMENDED
COMPLAINT**

DATE: December 2, 2014
TIME: 2:00 PM
CTRM: 9

The Honorable Jon S. Tigar

1 **NOTICE OF MOTION AND MOTION TO DISMISS**
2 **SECOND CONSOLIDATED AMENDED CLASS ACTION COMPLAINT**

3 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE that on December 2, 2014 at 2:00 p.m., or at such other time
5 convenient for the Court, in the courtroom of the Honorable Jon S. Tigar, located at 450 Golden
6 Gate Avenue, San Francisco, California, Defendant Foursquare Labs, Inc. will and hereby does
7 move for an order dismissing Plaintiffs' Second Consolidated Amended Complaint under Rules
8 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure and Article III of the United States
9 Constitution. This Motion is based on this Notice of Motion and Motion, the Memorandum of
10 Points and Authorities, the Court's files in this action, the arguments of counsel, and any other
11 matter that the Court may properly consider.

12 **STATEMENT OF RELIEF SOUGHT**

13 Foursquare seeks an order pursuant to Federal Rules of Civil Procedure 12(b)(1) and
14 12(b)(6) dismissing with prejudice Plaintiffs' claims against it for failure to allege Article III
15 standing and for failure to state a claim upon which relief can be granted.

16 **STATEMENT OF ISSUES TO BE DECIDED**

17 1. Should Plaintiffs' claims against Foursquare for invasion of privacy (intrusion
18 upon seclusion) and conversion be dismissed under Federal Rule of Civil Procedure 12(b)(1) for
19 failure to allege Article III standing?

20 2. Should Plaintiffs' claims against Foursquare for invasion of privacy (intrusion
21 upon seclusion) and conversion be dismissed under Federal Rule of Civil Procedure 12(b)(6) for
22 failure to state a claim upon which relief can be granted?

23 3. Should Plaintiffs' claims against Foursquare for invasion of privacy (intrusion
24 upon seclusion) and conversion be dismissed as preempted by the Copyright Act?

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant Foursquare hereby joins in and adopts the following arguments by its co-defendants:

By Defendant Instagram, LLC, section IV A regarding Plaintiffs’ failure to establish Article III standing; section IV.B.1.c, arguing that Plaintiffs have not stated a claim for intrusion of privacy because Plaintiffs have failed to plead harm; and section IV.B.2, arguing that Plaintiffs have failed to state a claim for conversion;

By Defendants Electronic Arts, Inc., Chillingo UK Ltd., Rovio Entertainment Ltd, and ZeptoLab UK Ltd, section IV.B.2, arguing that Plaintiffs have not stated a claim for intrusion of privacy because accessing Plaintiffs’ address book data was not highly offensive;

By Defendants Yelp Inc. and Foodspotting, Inc., section II.C.4, arguing that Plaintiffs’ conversion claim is preempted by the Copyright Act; and section II.B.3, arguing that Plaintiffs’ intrusion claim is preempted by the Copyright Act. However, Foursquare does not adopt the arguments by Yelp and Foodspotting to the extent they rely on Plaintiffs’ consent to Defendants’ accessing the address book data.

Dated: August 22, 2014

DAVID F. MCDOWELL
MORRISON & FOERSTER LLP

By: /s/ David F. McDowell
DAVID F. MCDOWELL

Attorneys for Defendant
FOURSQUARE LABS, INC.

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2014, I electronically filed the foregoing with the Clerk of Court using the EM/ECF system which will send a notice of electronic filing to all counsel of record who have consented to electronic notification. I further certify that, to my knowledge, there are no counsel of record in this matter that are not CM/ECF participants.

/s/ David F. McDowell
David F. McDowell

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